1880. June 8. „ 9. „ 10. „ 11.

Van Schalkwyk vs. Hugo & Another.

At that time the period of prescription in regard to immovable property was one-third of a century. So long as the adverse occupiers remained in actual possession, the course of their incompleted term of prescription could only be interrupted by means of a judicial interpellation in the same way as a creditor can only prevent the term of prescription from running against him by means of a judicial interpellation against the debtor. For that purpose a summons to appear in a Court having jurisdiction would be sufficient. Upon these matters I need only refer to *Voet* (41, 3, 20) and to *Act No.* 6 *of* 1861 (sect. 7). The Court will, by its judgment, declare that the river is the boundary between the farms of the plaintiff and defendants.

DWYER and SMITH, JJ., concurred.

[Plaintiff's Attorney, C. C. DE VILLIERS.
Defendants' Attorney, J. C. DE KORTÉ.]

In re PETITION OF G. C. RENS.

Curator bonis appointed to a deaf and dumb person.

1880. June 16. „ 17.

In re Petition of G. C. Rens.

The applicant, Gerhardus Christiaan Rens, stated in his petition:—

That in 1844 two curators of his property had been appointed on the ground that he was deaf and dumb, and incapable of managing his affairs, both of these curators being now dead.

That he was entitled to a sum of money in the hands of the Master of the Supreme Court, the interest of which the curators had annually received and expended for his benefit.

That, although deaf and dumb, he was quite able to manage his own affairs, and was desirous of disposing by will of the money belonging to him.

Wherefore he prayed that he might be declared capable of managing his affairs, that his property might be released from curatorship, and that the Master might be authorized to pay over to applicant the sum in his hands.

Evidence was given to the effect that applicant was deaf and dumb, but that he was not actually of unsound mind,

though the witnesses differed as to his intelligence, one of them stating that his faculties were somewhat dim, but that he was to some extent capable of managing his own affairs, while others said that he was an intelligent and wideawake man, and that it would be difficult to cheat him.

Jones, for applicant. One who is merely deaf and dumb is not liable to be placed under curatorship. *Grotius, Maasdorps' Translation* (Bk. 1, cap. 11, § 2); *Van der Keessel* (Thesis 164); *In re G. C. Rens* (3 Menz. p. 100); *Vinnius, ad Instit.* (1, 2, 3, 4); *Dig.* (29, 2, 5). The question in this case is whether the applicant is capable of managing his own affairs. The evidence before the Court is very strong that the applicant is so capable. The Court would surely relieve a person during a lucid interval or when he was shown to have recovered.

Leonard, for applicant's sister, who opposed the application. No authorities cited on the other side show that the principle that a person who is incapacitated from managing his own affairs should be put under curatorship applies to persons who are merely deaf and dumb.

DE VILLIERS, C.J.:—The passages cited by Mr. *Jones* from the *Institutes, Grotius*, and *Van der Keessel* fully confirm the correctness of the view taken by the Court in 1844, when the first application was made for the appointment of a curator to the person and property of the applicant, and granted as to his property. The passage from the *Digest*, no doubts, shows that a deaf and dumb person might under the Roman law act as an heir, but the apparent inconsistency is explained by *Voet* in a passage not cited on either side (27, 10, 13). A curator, he says in effect, may be appointed to the property of a deaf mute, but his advice or authority and assistance should only be given in so far as the deaf mute is prevented by his physical defect from administering his property, very much in the same way as curators to lunatics are deemed to be only curators in name to such lunatics during their lucid intervals. The applicant in the present case has not shown sufficient cause for being entirely released from curatorship, but of course the curator to be appointed will only exercise such powers as are required to supplement the applicant's physical defects.

1880. June 16. „ 17. *In re* Petition of G. C. Rens.

The matter must be referred to the Master to decide upon a fit and proper person to be appointed as curator to the applicant's property.

DWYER and SMITH, JJ., concurred.

Application refused.

[Applicant's Attorney, I. HORAK DE VILLIERS.]

MALAN AND VAN DER MERWE *vs.* SECRETAN, BOON & CO.

Pactum de non petendo.—Consideration.

An agreement entered into subsequently to a contract, either varying the terms of the contract or dissolving it wholly or in part, can by our law be used as a defence to an action on the contract, even though the party bringing action have received no consideration for entering into the agreement

Perry *vs.* Alexander (*Buch. Rep.* 1874, p. 59) *commented upon and approved.*

1880. June 17. „ 18. Malan & v. d. Merwe *vs.* Secretan, Boon & Co.

In this case two actions were by consent of the parties and leave of the Court amalgamated. The action was brought by J. J. Malan and W. C. van der Merwe, both resident in the district of Wellington, against Secretan, Boon & Co., who traded in Cape Town, upon two promissory notes, one for £111 6*s.* 3*d.*, made in favour of Van der Merwe, and the other for £162 19*s.* 2*d.* in favour of J. J. Malan. The defence set up was that the plaintiffs as well as the other creditors of the defendants had agreed to accept a composition of five shillings in the pound on the debts due to them by the defendants, who tendered to the plaintiffs the sums of £27 16*s.* 7*d.* and £40 15*s.*, as being the amounts due to them under the composition. The plaintiffs denied having entered into the alleged composition. The point of law to be decided was whether this composition, for agreeing to which the plaintiffs had received no consideration, furnished a sufficient defence to the action.